



Food and
Nutrition
Service

Braddock
Metro Center

1320
Braddock
Place
Alexandria
VA 22314

Arleen Ramos-Szatmary
Coordinator, School Nutrition Programs
New Jersey Department of Agriculture
P.O. Box 334
Trenton, New Jersey 08625-0334

Dear Ms. Ramos-Szatmary:

This letter is in response to the New Jersey Department of Agriculture's (NJDA) March 21, 2022, request to waive the requirements to meet annual Community Eligibility Provision (CEP) deadlines for school year (SY) 2022-2023. Local educational agencies (LEAs) continue to respond to and recover from the COVID-19 pandemic, including managing challenges related to supply chain and staffing issues, which are demanding significant LEA resources. In order to facilitate the adoption of CEP for SY 2022-2023, the Food and Nutrition Service (FNS) acknowledges additional time is necessary to gather accurate identified student data.

FNS did not receive authorization to extend Child Nutrition Response #82, the *Nationwide Waiver of Community Eligibility Provision Deadlines in the National School Lunch and School Breakfast Programs*, provided under the Families First Coronavirus Response Act (the FFCRA) (P.L. 116-127), as extended by the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159). Therefore, State agencies must request a statewide waiver under Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1760(l), to extend the CEP deadlines previously provided under the nationwide waiver authority.

To grant a Section 12(l) waiver, the NSLA requires that the waiver must facilitate the purpose of the program, the State or eligible service provider must provide notice and information to the public regarding the proposed waiver, and the waiver will not increase the overall cost of the program to the Federal Government. FNS finds that NJDA's waiver request satisfies these statutory requirements.

Specifically, NJDA requested a statewide waiver of the following CEP deadlines:

Calculating Identified Student Percentages Using Data as of April 1

Under Sections 11(a)(1)(F)(iii)(I)(bb), (a)(1)(F)(iv)(I)(bb), (a)(1)(F)(v)(I), and (a)(1)(F)(v)(II)(bb) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1759a, and FNS regulations at 7 CFR 245.9(f)(3)(i), (f)(4)(i), (f)(4)(v)(A), (f)(4)(viii), and (f)(4)(ix), LEAs must calculate the CEP identified student percentage (ISP) using data as of April 1 of the prior school year.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives, for NJDA, the requirement that LEAs base the ISP on data as of “April 1 of” the prior school year in the above referenced statutory and regulatory citations. Instead, LEAs electing CEP, establishing a new ISP, or conducting a grace year in SY 2022-2023, may calculate the ISP using data drawn any time during the prior school year (July 1, 2021, through June 30, 2022).

Local Educational Agency Notification Requirements

Under Section 11(a)(1)(F)(x)(IV) of the NSLA, 42 U.S.C. 1759a, LEAs must submit to the State agency lists of schools that:

- Have an ISP of at least 40 percent (eligible for CEP);
- Have an ISP greater than or equal to 30 percent but less than 40 percent (near-eligible for CEP); and
- Are currently in the fourth year of CEP participation with an ISP greater than or equal to 30 percent but less than 40 percent (eligible for grace year).

The regulations at 7 CFR 245.9(f)(5) establish this deadline as April 15.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives, for NJDA, the requirements in statute that LEAs must submit the above referenced lists “Not later than May 1 of” each school year and the requirement in regulation that LEAs must submit the above referenced lists “Not later than April 15 of” each school year. Instead, LEAs must submit the required lists to State agencies by June 30, 2022. State agencies that already have access to school-level information may continue to exempt LEAs from this requirement.

State Agency Notification Requirements

Under Section 11(a)(1)(F)(x)(II) of the NSLA, 42 U.S.C. 1759a, not later than May 1 of each school year, State agencies must notify each LEA of district-wide eligibility for CEP in the following categories:

- LEAs with a district-wide ISP of at least 40 percent (eligible for CEP);
- LEAs with a district-wide ISP greater than or equal to 30 percent but less than 40 percent (near-eligible for CEP);
- LEAs currently participating in CEP; and
- LEAs in the fourth year of CEP participation with a district-wide ISP greater than or equal to 30 percent but less than 40 percent (eligible for grace year).

Regulations at 7 CFR 245.9(f)(6) establish this deadline as April 15.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives, for NJDA, the requirement in statute that State agencies must complete the notification requirements described above “Not later than May 1” annually and the requirement in regulation that State agencies must complete notification requirements described above

“No later than April 15 of” each school year. Instead, NJDA must notify LEAs of CEP eligibility by June 30, 2022.

State Agency Publication Requirement

Under Section 11(a)(1)(F)(x)(III) of the NSLA, 42 U.S.C. 1759a, not later than May 1 of each school year, State agencies must submit to the Secretary lists of LEAs and schools identified above in State agency and LEA notification requirements. Regulations at 7 CFR 245.9(f)(7) also require that State agencies make the lists of LEAs and schools readily accessible on a State agency website by May 1 of each school year.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives, for NJDA, the requirement in statute that State agencies must submit the lists described above “Not later than May 1 of” each school year, and the requirement in regulation that State agencies make the lists readily accessible on a public website “By May 1 of” each school year. Instead, State agencies must make the above-referenced lists publicly available on State agency websites by June 30, 2022. By June 30, 2022, State agencies must also submit the lists of CEP-eligible LEAs and schools to USDA by emailing a link to the lists posted on the State agency website; the email must be sent to sm.fn.cepnotification@usda.gov.

June 30 Election Deadline

Under Section 11(a)(1)(F)(x)(I) of the NSLA, 42 U.S.C. 1759a, LEAs that intend to elect CEP in the following school year must notify the State agency and submit ISP documentation not later than June 30 of the current school year. This requirement is codified in FNS regulations at 7 CFR 245.9(f)(4)(i).

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives, for NJDA, the statutory requirement that LEAs intending to elect CEP for SY 2022-2023 must submit ISP documentation by “Not later than June 30 of the current school year,” and the corresponding regulatory requirement that such documentation must be submitted “no later than June 30.” Instead, LEAs that intend to elect CEP for SY 2022-2023 must submit ISP documentation to the State agency by September 30, 2022.

Summary

This waiver allows NJDA and LEAs under its jurisdiction to make the following adjustments to annual CEP deadlines for SY 2022-2023.

CEP Requirement	Annual Deadline	Waiver Deadline
Data Used to Calculate ISP	April 1	Anytime between July 1, 2021, and June 30, 2022
LEA Notification	April 15	June 30, 2022

State Agency Notification	April 15	June 30, 2022
State Agency Publication	May 1	June 30, 2022
Elect CEP for SY 2022-2023	June 30	September 30, 2022

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS approves NJDA's waiver request through September 30, 2022. The State agency should inform LEAs implementing CEP of the flexibilities provided by this waiver as quickly as possible.

The waiver authority at Section 12(l) of the NSLA requires FNS to periodically review the performance of any State or eligible service provider that was granted a waiver. Compliance with the updated dates is necessary to justify a continuation of the waiver. Therefore, NJDA must provide to the FNS Mid-Atlantic Regional Office a written report not later than 1 year after receiving the waiver, quantifying the impact of the waiver, as described below.

The report must include the following:

- A description of how the waiver impacted NSLP and SBP operations in CEP participating schools;
- A description of whether the waiver resulted in improved services to children; and
- The number of LEAs that used the waiver.

FNS appreciates NJDA's exceptional effort to meet the nutritional needs of children during this challenging time. If you have questions, please contact the FNS Mid-Atlantic Regional Office.

Sincerely,

Tina Namian
Acting Director
Policy and Program Development Division